

1 Katherine F. Parks, Esq. - State Bar No. 6227
2 Thorndal Armstrong Delk Balkenbush & Eisinger
3 6590 S. McCarran Blvd., Suite B
4 Reno, Nevada 89509
5 (775) 786-2882
6 kfp@thorndal.com
7 Attorneys for Defendant
8 CHURCHILL COUNTY

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 MICHAEL ERWINE, an individual,

12 Plaintiff,

13 vs.

14 CHURCHILL COUNTY, a political subdivision
15 of the State of Nevada; and DOES 1 through 10
16 inclusive,

17 Defendants.

CASE NO. 3:18-cv-00461-RCJ-WGC

ANSWER TO COMPLAINT

18 COMES NOW Defendant, CHURCHILL COUNTY, by and through its attorneys of
19 record, Thorndal Armstrong Delk Balkenbush & Eisinger, and in answer to Plaintiff's
20 Complaint, hereby admits, denies, and alleges as follows:

21 **FIRST DEFENSE**

22 **JURISDICTION AND VENUE**

23 1. Defendant denies the allegations contained in Paragraph 1 of Plaintiff's
24 Complaint.

25 2. Defendant is without sufficient knowledge or information with which to form a
26 belief as to the truth of the allegations contained in Paragraph 2 of Plaintiff's Complaint and,
27 upon such basis, denies said allegations.
28

1 3. Defendant is without sufficient knowledge or information with which to form a
2 belief as to the truth of the allegations contained in Paragraph 3 of Plaintiff's Complaint and,
3 upon such basis, denies said allegations.

4 **PARTIES**

5 4. Defendant is without sufficient knowledge or information with which to form a
6 belief as to the truth of the allegations contained in Paragraph 4 of Plaintiff's Complaint and,
7 upon such basis, denies said allegations.

8 5. Defendant admits the allegations contained in Paragraph 5 of Plaintiff's
9 Complaint.

10 7. Defendant denies the allegations contained in Paragraph 7 of Plaintiff's
11 Complaint.

12 8. Defendant denies the allegations contained in Paragraph 8 of Plaintiff's
13 Complaint.

14 **GENERAL ALLEGATIONS**

15 9. Defendant admits the allegations contained in Paragraph 1 of Plaintiff's
16 Complaint.

17 10. Defendant admits the allegations contained in Paragraph 2 of Plaintiff's
18 Complaint.

19 11. Defendant admits the allegations contained in Paragraph 3 of Plaintiff's
20 Complaint.

21 12. Paragraphs 4(a)-(h) of the Plaintiff's Complaint contain citation to a document
22 attached as Exhibit 2 to the Complaint, rather than factual allegations to be admitted or denied by
23 the Defendant. Exhibit 2 speaks for itself.

24 13. Defendant denies the allegations contained in Paragraph 5 of Plaintiff's
25 Complaint.

26 14. Defendant denies the allegations contained in Paragraph 6 of Plaintiff's
27 Complaint.

28 15. Defendant denies the allegations contained in Paragraph 7 of Plaintiff's
Complaint.

1 16. As to the allegations contained in sentences one, two, three, five and six of
2 Paragraph 8 of Plaintiff's Complaint, Defendant is without sufficient knowledge or information
3 with which to form a belief as to the truth of the allegations contained in same and, upon such
4 basis, denies said allegations. Defendant denies the allegations in the fourth sentence of
5 Paragraph 8 of Plaintiff's Complaint.

6 17. Defendant admits the allegations contained in the first and third sentences of
7 Paragraph 9 of Plaintiff's Complaint. As to the second, sixth, seventh and eighth sentences of
8 Paragraph 9 of Plaintiff's Complaint, Defendant is without sufficient knowledge or information
9 with which to form a belief as to the truth of the allegations contained therein and, upon such
10 basis, denies said allegations. Defendant denies the allegations contained in the fourth, fifth,
11 ninth and tenth sentences of Paragraph 9 of Plaintiff's Complaint.

12 18. Defendant denies the allegations contained in Paragraph 10 of Plaintiff's
13 Complaint.

14 19. As to the allegations contained in the first, second, fourth, and fifth sentences of
15 Paragraph 11 of Plaintiff's Complaint, Defendant is without sufficient knowledge or information
16 with which to form a belief as to the truth of the allegations contained therein and, upon such
17 basis, denies said allegations. Defendant denies the allegations contained in the third sentence
18 of Paragraph 11 of Plaintiff's Complaint.

19 20. Defendant is without sufficient knowledge or information with which to form a
20 belief as to the truth of the allegations contained in Paragraph 12 of Plaintiff's Complaint and,
21 upon such basis, denies said allegations.

22 21. Defendant denies the allegations contained in Paragraph 13 of Plaintiff's
23 Complaint.

24 22. Defendant is without sufficient knowledge or information with which to form a
25 belief as to the truth of the allegations contained in Paragraph 14 of Plaintiff's Complaint and,
26 upon such basis, denies said allegations.

27 23. Defendant is without sufficient knowledge or information with which to form a
28 belief as to the truth of the allegations contained in Paragraph 15 of Plaintiff's Complaint and,
upon such basis, denies said allegations.

1 24. Defendant is without sufficient knowledge or information with which to form a
2 belief as to the truth of the allegations contained in Paragraph 16 of Plaintiff's Complaint and,
3 upon such basis, denies said allegations.

4 25. As to the allegations contained in the first sentence of Paragraph 17 of Plaintiff's
5 Complaint, Defendant admits the allegations. As to the allegations contained in the second
6 sentence of Paragraph 17 of Plaintiff's Complaint, Defendant denies the allegations.

7 26. In answer to Paragraph 18 of Plaintiff's Complaint, Defendant admits that Deputy
8 Jabines asked an inmate to pick up items which had been dropped on the floor of the booking
9 cage and deny all remaining allegations in ¶18.

10 27. As to the allegations contained in the first sentence of Paragraph 19 of Plaintiff's
11 Complaint, Defendant is without sufficient knowledge or information with which to form a belief
12 as to the truth of the allegations contained therein and, upon such basis, denies said allegations.
13 As to the allegations contained in the second sentence of Paragraph 19 of Plaintiff's Complaint,
14 Defendant denies said allegations.

15 28. Defendant denies the first and second sentences of Paragraph 20 of Plaintiff's
16 Complaint. In answer to the third sentence in Paragraph 20, Defendant admits that Plaintiff
17 removed his taser from its holster and denies the remaining allegations in the third sentence of
18 Paragraph 20. Defendant denies the allegations in the fourth sentence of Paragraph 20.
19 Defendant admits the allegations in the fifth sentence of Paragraph 20.

20 29. Defendant denies the allegations contained in Paragraph 21 of Plaintiff's
21 Complaint.

22 30. In answer to the first sentence of Paragraph 22 of the Plaintiff's Complaint, the
23 Defendant admits that Plaintiff was called into a meeting on October 10, 2016, with Captain
24 Matheson and Sheriff Trotter and denies the remaining allegations contained in same. In answer
25 to the second sentence of Paragraph 22, the Defendant admits that Sheriff Trotter informed the
26 Plaintiff that he was aware of the booking that took place over the weekend and that he had
27 concerns over the Plaintiff's actions and denies the remaining allegations on information and
28 belief. Defendant is without sufficient knowledge or information with which to form a belief as
to the truth of the allegations contained in the third sentence of Paragraph 22 and, upon such

1 basis, denies said allegations. Defendant admits the allegations in the fourth sentence of
2 Paragraph 22. Defendant denies the allegations in the fifth sentence of Paragraph 22.

3 31. Defendant is without sufficient knowledge or information with which to form a
4 belief as to the truth of the allegations contained in Paragraph 23 of Plaintiff's Complaint and,
5 upon such basis, denies said allegations.

6 32. Defendant is without sufficient knowledge or information with which to form a
7 belief as to the truth of the allegations contained in Paragraph 24 of Plaintiff's Complaint and,
8 upon such basis, denies said allegations.

9 33. Defendant is without sufficient knowledge or information with which to form a
10 belief as to the truth of the allegations contained in the first sentence of Paragraph 25. Sentences
11 two through five of Paragraph 25 of Plaintiff's Complaint contain citation to documents attached
12 as Exhibits 5 and 6 to Plaintiff's Complaint, rather than factual allegations to be admitted or
13 denied by the Defendant. Exhibits 5 and 6 speak for themselves. Defendant denies the
14 allegations contained in the sixth sentence of Paragraph 25. Defendant is without sufficient
15 knowledge or information with which to form a belief as to the truth of the allegations contained
16 in the seventh and eighth sentences of Paragraph 25. Defendant denies the allegations in the
17 ninth sentence of Paragraph 25.

18 34. Defendant denies the allegations contained in Paragraph 26 of Plaintiff's
19 Complaint.

20 35. Defendant is without sufficient knowledge or information with which to form a
21 belief as to the truth of the allegations contained in Paragraph 27 of Plaintiff's Complaint and,
22 upon such basis, denies said allegations.

23 36. Defendant denies the allegations contained in Paragraph 28 of Plaintiff's
24 Complaint.

25 37. Defendant is without sufficient knowledge or information with which to form a
26 belief as to the truth of the allegations contained in Paragraph 29 of Plaintiff's Complaint and,
27 upon such basis, denies said allegations.
28

1 38. Defendant is without sufficient knowledge or information with which to form a
2 belief as to the truth of the allegations contained in Paragraph 30 of Plaintiff's Complaint and,
3 upon such basis, denies said allegations.

4 39. Defendant is without sufficient knowledge or information with which to form a
5 belief as to the truth of the allegations contained in Paragraph 31 of Plaintiff's Complaint and,
6 upon such basis, denies said allegations.

7
8 40. Defendant denies the allegations contained in Paragraph 32 of Plaintiff's
9 Complaint.

10 41. Defendant denies the allegations contained in Paragraph 33 of Plaintiff's
11 Complaint.

12
13 42. Defendant is without sufficient knowledge or information with which to form a
14 belief as to the truth of the allegations contained in Paragraph 34 of Plaintiff's Complaint and,
15 upon such basis, denies said allegations.

16 43. Defendant is without sufficient knowledge or information with which to form a
17 belief as to the truth of the allegations contained in Paragraph 35 of Plaintiff's Complaint and,
18 upon such basis, denies said allegations.

19
20 44. Defendant is without sufficient knowledge or information with which to form a
21 belief as to the truth of the allegations contained in Paragraph 36 of Plaintiff's Complaint and,
22 upon such basis, denies said allegations.

23
24 45. Defendant is without sufficient knowledge or information with which to form a
25 belief as to the truth of the allegations contained in Paragraph 37 of Plaintiff's Complaint and,
26 upon such basis, denies said allegations.

1 46. Defendant is without sufficient knowledge or information with which to form a
2 belief as to the truth of the allegations contained in Paragraph 38 of Plaintiff's Complaint and,
3 upon such basis, denies said allegations.

4 47. Defendant is without sufficient knowledge or information with which to form a
5 belief as to the truth of the allegations contained in Paragraph 39 of Plaintiff's Complaint and,
6 upon such basis, denies said allegations.

7 48. Defendant is without sufficient knowledge or information with which to form a
8 belief as to the truth of the allegations contained in Paragraph 40 of Plaintiff's Complaint and,
9 upon such basis, denies said allegations.

10 49. Defendant is without sufficient knowledge or information with which to form a
11 belief as to the truth of the allegations contained in Paragraph 41 of Plaintiff's Complaint and,
12 upon such basis, denies said allegations.

13 50. Defendant is without sufficient knowledge or information with which to form a
14 belief as to the truth of the allegations contained in Paragraph 42 of Plaintiff's Complaint and,
15 upon such basis, denies said allegations.

16 51. Defendant denies the allegations contained in Paragraph 43 of Plaintiff's
17 Complaint.

18 52. Defendant denies the allegations contained in Paragraph 44 of Plaintiff's
19 Complaint.

20 **CONDITIONS PRECEDENT TO FILING THIS ACTION**

21 53. Defendant denies the allegations contained in Paragraph 45 of Plaintiff's
22 Complaint.

FIRST CAUSE OF ACTION

(Violation of Due Process – 42 U.S.C. § 1983)

54. In answer to Paragraph 46 of Plaintiff's Complaint, Defendant repeats and re-alleges each and every answer to Paragraphs 1 through 45 as though fully set forth herein at length.

55. Paragraph 47 of the Plaintiff's Complaint calls for a legal conclusion, not facts, which cannot be admitted or denied by Defendant. To the extent Paragraph 47 is deemed to contain factual allegations, Defendant denies said allegations.

56. Paragraph 48 of the Plaintiff's Complaint calls for a legal conclusion, not facts, which cannot be admitted or denied by Defendant. To the extent Paragraph 48 is deemed to contain factual allegations, Defendant denies said allegations.

57. Paragraph 49 of the Plaintiff's Complaint calls for a legal conclusion, not facts, which cannot be admitted or denied by Defendant. To the extent Paragraph 49 is deemed to contain factual allegations, Defendant denies said allegations.

58. Defendant denies the allegations contained in Paragraph 50 of Plaintiff's Complaint.

59. Defendant denies the allegations contained in Paragraph 51 of Plaintiff's Complaint.

SECOND CAUSE OF ACTION

(Constructive Discharge)

60. In answer to Paragraph 52 of Plaintiff's Complaint, Defendant repeats and re-alleges each and every answer to Paragraphs 1 through 51 as though fully set forth herein at length.

FOURTH CAUSE OF ACTION

(Defamation Per Se)

70. In answer to Paragraph 62 of Plaintiff's Complaint, Defendant repeats and re-alleges each and every answer to Paragraphs 1 through 61 as though fully set forth herein at length.

71. Defendant denies the allegations contained in Paragraph 63 of Plaintiff's Complaint.

72. Defendant denies the allegations contained in Paragraph 64 of Plaintiff's Complaint.

73. Defendant denies the allegations contained in Paragraph 65 of Plaintiff's Complaint.

74. Defendant denies the allegations contained in Paragraph 66 of Plaintiff's Complaint.

FIFTH CLAIM FOR RELIEF

(Intentional Interference With Prospective Employment)

75. In answer to Paragraph 67 of Plaintiff's Complaint, Defendant repeats and re-alleges each and every answer to Paragraphs 1 through 66 as though fully set forth herein at length.

76. Defendant denies the allegations contained in Paragraph 68 of Plaintiff's Complaint.

77. Defendant denies the allegations contained in Paragraph 69 of Plaintiff's Complaint.

78. Defendant denies the allegations contained in Paragraph 70 of Plaintiff's Complaint.

1 79. Defendant denies the allegations contained in Paragraph 71 of Plaintiff's
2 Complaint.

3 80. Defendant denies the allegations contained in Paragraph 71 of Plaintiff's
4 Complaint.

5 81. Defendant denies the allegations contained in Paragraph 72 of Plaintiff's
6 Complaint.

7 82. Defendant denies the allegations contained in Paragraph 73 of Plaintiff's
8 Complaint.

9
10 **SECOND DEFENSE**

11
12 Plaintiff's Complaint on file herein fails to state a claim against Defendant upon which
13 relief may be granted.

14 **THIRD DEFENSE**

15 At all times and places alleged in Plaintiff's Complaint, the negligence, misconduct, and
16 fault of Plaintiff exceeds that of Defendant, if any, and Plaintiff is thereby barred from any
17 recovery against Defendant.

18 **FOURTH DEFENSE**

19 The occurrence referred to in Plaintiff's Complaint, and all damages, if any, arising
20 therefrom, were caused by the acts or omissions of a third person or persons over whom this
21 Defendant had no control.

22 **FIFTH DEFENSE**

23 It has been necessary for Defendant to employ the services of an attorney to defend this
24 action, and a reasonable sum should be allowed Defendant as and for attorney's fees, together
25 with its costs expended in this action.

26 **SIXTH DEFENSE**

27 Defendant alleges that at all times and places alleged in the Complaint, Plaintiff did not
28 exercise ordinary care, caution or prudence in the premises to avoid the loss herein complained

1 of, and that same was directly and proximately contributed to and caused by the negligence,
2 misconduct and fault of the Plaintiff.

3 **SEVENTH DEFENSE**

4 Defendant alleges that Plaintiff has failed to timely plead this matter and has thereby
5 delayed the litigation and investigation of this claim to the prejudice of this Defendant and
6 accordingly this action should be dismissed.

7 **EIGHTH DEFENSE**

8 On information and belief, Defendant alleges that Plaintiff's causes of action as set forth
9 in the Complaint are barred by the statute of limitations as contained in Chapter 11 of the Nevada
10 Revised Statutes and Federal law.

11 **NINTH DEFENSE**

12 Upon information and belief, Plaintiff has failed to mitigate his damages.

13 **TENTH DEFENSE**

14 Plaintiff is estopped from asserting any cause of action whatever against Defendant.

15 **ELEVENTH DEFENSE**

16 Plaintiff, by his acts and conduct, has waived and abandoned any and all claims as
17 alleged herein against Defendant.

18 **TWELFTH DEFENSE**

19 Defendant's alleged actions or omissions were taken with due care in the execution of the
20 statutes and regulations, and, therefore, Defendant is statutorily immune from this action.

21 **THIRTEENTH DEFENSE**

22 Defendant's alleged actions or omissions occurred in the exercise or performance of
23 discretionary functions and duties, and, therefore, Defendant is statutorily immune from this
24 action.

25 **FOURTEENTH DEFENSE**

26 An award of punitive damages against Defendant would be violative of the Fifth
27 Amendment of the United States Constitution in that there is no assurance against multiple,
28 unrestrained punishment in the form of punitive damages. Such an award of punitive damages
would be violative of the double jeopardy provisions of the Nevada Constitution, Art. I, §8.

FIFTEENTH DEFENSE

An award of punitive damages against Defendant would be violative of the due process clause of the United States Constitution, the Fourteenth Amendment, §1, and violative of the due process clause of the Nevada Constitution, Art. I, §8.

SIXTEENTH DEFENSE

An award of punitive damages against Defendant would constitute an undue burden upon interstate commerce and violate the interstate commerce clause of the United States Constitution, Art. I, §8.

SEVENTEENTH DEFENSE

An award of punitive damages against Defendant would constitute an excessive fine violative of the Nevada Constitution, Art. I, §7.

EIGHTEENTH DEFENSE

An award of punitive damages against Defendant should be barred since Plaintiff cannot establish that Defendant had an "evil mind" and "conducted itself in an aggravated and outrageous manner".

NINETEENTH DEFENSE

The burden of proof on punitive damages should be by clear and convincing evidence.

TWENTIETH DEFENSE

Plaintiff's claims are barred for failure to exhaust all administrative remedies.

TWENTY-FIRST DEFENSE

Plaintiff may have suffered from a pre-existing injury or condition and is not entitled to compensation therefore.

TWENTY-SECOND DEFENSE

Plaintiff did not have a protected property interest in continued employment with Churchill County and, as such, Plaintiff fails to state a claim under 42 U.S.C. §1983 on which relief may be granted

TWENTY-THIRD DEFENSE

Any alleged statements made by the Defendant, if any, were statements of opinions, not fact.

TWENTY-FOURTH DEFENSE

At no time did Defendant make a false or defamatory statement concerning Plaintiff.

TWENTY-FIFTH DEFENSE

Defendant did not publish an unprivileged statement concerning Plaintiff to a third person.

TWENTY-SIXTH DEFENSE

No custom or policy existed in Churchill County which caused a violation of Plaintiff's constitutional rights.

TWENTY-SEVENTH DEFENSE

Plaintiff is barred from the recovery of punitive damages against Churchill County pursuant to NRS 41.035.

TWENTY-EIGHTH DEFENSE

Plaintiff is barred from recovery of punitive damages against Churchill County pursuant to 42 U.S.C. § 1988.

TWENTY-NINTH DEFENSE

Any alleged statements made by Defendant concerning Plaintiff, if any, as alleged in Plaintiff's Complaint were absolutely privileged.

THIRTIETH DEFENSE

Any alleged statements made by Defendant concerning Plaintiff, if any, as alleged in Plaintiff's Complaint were conditionally privileged.

THIRTY-FIRST DEFENSE

Any alleged statements made by Defendant concerning Plaintiff, if any, as alleged in Plaintiff's Complaint which were stated as fact were true.

THIRTY-SECOND DEFENSE

No prospective contract existed between Plaintiff and any third party of which this Defendant was aware.

THIRTY-THIRD DEFENSE

Plaintiff's claims are barred by virtue of NRS 41.660.

THIRTY-FOURTH DEFENSE

The Court should decline to accept jurisdiction of Plaintiff's state law claims.

THIRTY-FIFTH DEFENSE

Pursuant to FRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's answer, and therefore Defendant reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, Defendant prays:

1. That Plaintiff's Complaint be dismissed with prejudice and that he take nothing thereby;
2. That Defendant be awarded a reasonable attorney's fee and costs of suit; and
3. For such other and further relief as this Court deems just and proper.

DATED this 15th day of November, 2018.

THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

By: / s / Katherine F. Parks
Katherine F. Parks, Esq.
State Bar No. 6227
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509
(775) 786-2882
kfp@thorndal.com
Attorneys for Defendant
Churchill County

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on this date I caused the foregoing **ANSWER TO COMPLAINT** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☒ United States District Court, District of Nevada CM/ ECF (Electronic Case Filing)

_____ personal delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

fully addressed as follows:

Jason D. Guinasso, Esq.
Hutchison & Steffen, PLLC
500 Damonte Ranch Parkway, Suite 980
Reno, NV 89521
Attorney for Plaintiff

DATED this 15th day of November, 2018.

/ s / **Sam Baker**

An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER